IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4699 OF 2004

Ms.Chandrika S.Shah ...Applicant

Versus

Mr.Nandan Shah & Anr. ...Respondents

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Mr.M.B.Shirsat for Applicant.

Mr.K.V.Saste. A.P.P. for Respondent No.2.

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CORAM: A.M.KHANWILKAR, J.

DECEMBER 21, 2004.

P.C.

1. Heard Mr.Shirsat for Applicant and Mr.Saste, A.P.P. for Respondent No.2. None appears for Respondent No.1 though served. Affidavit of service has been filed, which indicates that Respondent No.1/complainant has been duly served.

2. The short question that arises for consideration in the present Application is: whether the complaint as filed by the Respondent

No.1 against three accused, in which, Applicant has been named as accused No.3, can be allowed to proceed, insofar as Applicant/accused No.3 is concerned?

3. The only allegation in the complaint, so as to name the Applicant as accused No.3 is that she is the Director of the accused Company and wife of accused No.2; They were jointly and severally responsible for the financial and administrative decisions and day-to-day affairs of the Company. Admittedly, the Applicant is not signatory to the cheque. There is no other assertion, much less, material facts spelt out in the complaint so as to indicate the complicity of the Applicant to make her liable for the offence committed by the Company, as is required by the mandate of Section 141 of the Negotiable Instruments Act. I had occasion to decide this aspect in **Criminal Writ Petition No.2241 of 2004 - Madanlal Taparia & Anr. vs. The Bank of Rajasthan Ltd. & Anr. decided on 14th December 2004.** For the view taken therein, the criminal action in the present case cannot be allowed to proceed, as there is no allegation to

indicate complicity of the Applicant, as is required by Section 141 of the Act.

4. Accordingly this Application succeeds and is allowed in terms of prayer clause (a), only insofar as Applicant/accused No.3 is concerned.

A.M.KHANWILKAR, J.